

Carpenter, Hazlewood, Delgado & Bolen, LLP
Attorneys at Law
1400 E. Southern Avenue, Suite 400
Tempe, Arizona 85282
t 480.427.2800 | f 480.427.2801
Chad P. Miesen SBN 024910
Edith I. Rudder SBN 020650
bknotice@carpenterhazlewood.com
VALLEELD.0062

Attorneys for Creditor

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

Yahir Eduardo Bautista Retana and
Elizabeth Partida,

Debtor(s).

Case No. 2:19-bk-13347-EPB

Chapter 13

**RENEWED OBJECTION TO PLAN
CONFIRMATION**

Secured Creditor, Valle Eldorado Homeowners' Association, Inc., (the "Association"), hereby renews its Objection to Plan Confirmation, originally filed on December 2, 2019 (Document No. 21) for the Original Plan, to cover the Amended Plan filed by Debtor on February 27, 2020. Debtors' Plan lists the Association in conflicting classifications and is not addressing payment of the post-petition assessments.

Debtor's Plan lists the Association in conflicting classifications; i.e., the Association is listed in Administrative Expenses and All Claims under Section C(4)(b) for No pre-Petition Mortgage Arrears as well as in Section C(4)(c) as a creditor secured solely by real property with a pre-petition arrearage. The Association's assessment lien is secured solely

1 by real property and needs to be included in only one category C(4)(c). The amount listed in
2 C(4)(c) is \$10,668.37 with no interest, however, interest accrues at twelve percent (12%).
3

4 Debtors' Plan does not address payment of the post-petition payments pursuant to the
5 new bankruptcy requirements under *Goudelock v. Sixty-01 Ass'n of Apartment Owners*,
6 895 F.3d 633 (9th Cir. 2018). *See, also*, Bank. L.R. 2084-4. In *Goudelock*, the Ninth
7 Circuit stated:
8

9 The Bankruptcy Code defines "debt" as a "liability on a claim." 11 U.S.C. §
10 101(12). In turn, 11 U.S.C. § 101(5)(A) defines a "claim," (and thus, a debt)
11 as a "right to payment, whether or not such right is reduced to judgment,
12 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
13 undisputed, legal, equitable, secured, or unsecured." This definition of a
14 claim is very broad, encompassing all of a debtor's obligations "*no matter*
15 *how remote or contingent.*" *In re SNTL Corp.*, 571 F.3d 826, 838 (9th Cir.
16 2009) (quoting *In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993)); *see also*,
17 *e.g.*, *Rosteck*, 899 F.2d at 696; *In re Christian Life Ctr.*, 821 F.2d 1370, 1375
18 (9th Cir. 1987) (stating that Congress intended to provide " 'the broadest
19 possible definition' of claims so that 'all legal obligations of the debtor, no
20 matter how remote or contingent, will be able to be dealt with in the
21 bankruptcy case.'" (quoting S. Rep. No. 95-989, at 22 (1978), *as reprinted*
22 *in* 1978 U.S.C.C.A.N. 5787, 5808)).

23 Thus, the obligation to pay [condominium association] assessments is a debt
24 since it creates a right to payment. *See* 11 U.S.C. § 101(5)(A). The fact that
25 the future assessments may be a contingent and unmatured form of the debt
26 does not alter this analysis. *See, e.g., id.; SNTL Corp.*, 571 F.3d at 838.
27

28 *Goudelock*, 895 F.3d at 637-38.

29 The court went on to hold that in the Ninth Circuit, courts use the "fair
30 contemplation" test to determine when a claim arises. *Id.* (citing *SNTL Corp.*, 571 F.3d at
31 839). This test provides that "a claim arises when a claimant can fairly or reasonably
32 contemplate the claim's existence even if a cause of action has not yet accrued under
33 nonbankruptcy law." *Id.*

1 The court reasoned that at the time of the purchase of a condominium unit, the
2 condominium association can fairly contemplate that the monthly assessments will
3 continue to accrue based upon such owner's continued ownership of the condominium unit.
4 Thus, such owner's *in personam* obligation to pay condominium assessments arises when
5 the owner purchased the condominium unit. *Id.* (citing *Rosteck*, 899 F.2d at 696
6 (concluding that the debtors "had a debt for future condominium assessments when they
7 filed their bankruptcy petition" in light of the pre-petition obligation in the declaration)).
8

9
10 "Before becoming due each month, the assessments, which are part of the pre-
11 petition debt, are unmatured and are also contingent upon continued ownership of the
12 property. Unmatured contingent debts are, however, dischargeable under Section 1328(a)."
13 *Id.* (citing 11 U.S.C. § 101(5)(A); *Coonfield*, 517 B.R. at 242 (providing that a homeowners
14 association "possesses its claim by virtue of [the debtors] acquiring title to the
15 condominium and subsequent assessments are a consequence of, and mature from, the act
16 that gave rise to such claim. Thus, absent the debtors' pre-petition act of taking title, the
17 Homeowners Association would not have a claim")).
18

19
20 The Association's assessment lien is secured solely by real property and thus, must
21 be addressed in the Plan pursuant to Section C(4)(a), (b) or (c). The Association contends
22 that *Goudelock* and Rule 2084-4 require that the assessment lien (consensual pursuant to
23 Article VII Section 7.1 of the Declaration of Valle Eldorado Homeowners' Association, Inc.
24 recorded at Instrument No. 99-0357658 in the Office of the Maricopa County Recorder and
25 A.R.S. §33-1807) should be treated, at least administratively, in the same manner as a
26 mortgage. The only difference is that the amount of the debt is not fixed. Thus, because
27
28

1 Debtor's owes prepetition arrearage to the Association, it should be listed in Section
2 C(4)(c) and all post-petition payments must be made through the Plan. The Association
3 will be filing an amended Proof of Claim to address the post-petition payments.
4

5 Therefore, the Association respectfully requests that it receive the Plan payments
6 and required post-petition assessment payments through the Plan in the normal course. In
7 the alternative, the Association will accept the following as non-standard provision in
8 Section H of the Plan:
9

10 Valle Eldorado Homeowners' Association, Inc., secured by Debtors'
11 residence, shall be paid the prepetition arrearage of \$14,312.94 with 12%
12 interest. Debtors will make regular post-petition payments directly to the
13 Association. Valle Eldorado Homeowners' Association, Inc. shall retain its
14 lien regarding the pre-petition arrears until the entire pre-petition arrears have
15 been paid through this Plan.

16 The Association files this objection to preserve this issue while the parties negotiate
17 the terms of the Stipulated Order of Confirmation.

18 DATED this 25 day of March, 2020

19 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

20
21 By: 

22 Edith I. Rudder
23 1400 E. Southern Ave., Suite 400
24 Tempe, Arizona 85282
25 Phone: (480) 427-2800
26 bknotice@carpenterhazlewood.com

27 COPY of the foregoing mailed
28 this 25 day of March, 2020, to:

1 Yahir Eduardo Bautista Retana
2 and Elizabeth Partida
3 7128 W. Hilton Ave.
4 Phoenix, AZ 85043
Debtor(s)

5 Thomas Adams McAvity
6 c/o Phoenix Fresh Start Bankruptcy Attorneys
7 4602 E Thomas Rd, Ste S-9
8 Phoenix, AZ 85028
Attorney for Debtor(s)

9 Edward J. Maney
10 101 N. First Avenue
11 Suite 1775
12 Phoenix, AZ 85003 b b
Trustee

13 /s/ Carolina Murphey
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28